SUPREME COURT OF THE UNITED STATES

No. 597.—October Term, 1965.

James E. Mills, Appellant, *v.* State of Alabama.	On Appeal From the Supreme Court of Alabama.

[May 23, 1966.]

Mr. Justice Black delivered the opinion of the Court.

The question squarely presented here is whether a State, consistently with the United States Constitution, can make it a crime for the editor of a daily newspaper to write and publish an editorial *on election day* urging people to vote a certain way on issues submitted to them.

On November 6, 1962, Birmingham, Alabama, held an election for the people to decide whether they preferred to keep their existing city commission form of government or replace it with a mayor-council government. On election day the Birmingham Post Herald, a daily newspaper, carried an editorial written by its editor, appellant James E. Mills, in which it strongly urged the people to adopt the mayor-council form of government.[1]

[1] The editorial said in part: "Mayor Hanes' proposal to buy the votes of City employees with a promise of pay raises which would cost the taxpayers nearly a million dollars a year was cause enough to destroy any confidence the public might have had left in him.

"It was another good reason why the voters should vote overwhelmingly today in favor of Mayor-Council government.

"Now Mr. Hanes, in his arrogance, proposes to set himself up as news censor at City Hall and 'Win or lose' today he says he will instruct all city employees under him to neither give out news regarding the public business with which they are entrusted nor to discuss it with reporters either from the Post Herald or the News.

. . . . .

"If Mayor Hanes displays such arrogant disregard of the public's right to know on the eve of the election what can we expect in the future if the City Commission should be retained?

"Let's take no chances.

"Birmingham and the people of Birmingham deserve a better break. A vote for Mayor-Council government will give it to them."

Mills was later arrested on a complaint charging that by publishing the editorial *on election day* he had violated § 285 of the Alabama Corrupt Practices Act, Ala. Code, 1940, Tit. 17, §§ 268–286, which makes it a crime "to do any electioneering or to solicit any votes . . . in support of or in opposition to any proposition that is being voted on on the day on which the election affecting such candidates or propositions is being held." [2] The trial court sustained demurrers to the complaint on the grounds that the state statute abridged freedom of speech and press in violation of the Alabama Constitution and the First and Fourteenth Amendments to the United States Constitution. On appeal by the State, the Alabama Supreme Court held that publication of the editorial on election day undoubtedly violated the state law and then went on to reverse the trial court by holding that the state statute as applied did not unconstitutionally abridge freedom of speech or press. Recognizing that the state law did limit and restrict both speech and press, the State Supreme Court nevertheless sustained it as a valid exercise of the State's police power chiefly because, as that court said, the press "restriction, everything considered, is within the field of reasonableness" and "not an

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[2] "§ 285 (599) Corrupt Practices at Elections Enumerated and Defined.—It is a corrupt practice for any person on any election day to intimidate or attempt to intimidate an elector or any of the election officers; or, obstruct or hinder or attempt to obstruct or hinder, or prevent or attempt to prevent the forming of the lines of the voters awaiting their opportunity or time to enter the election booths; or to hire or to let for hire any automobile or other conveyance for the purpose of conveying electors to and from the polls; or, to do any electioneering or to solicit any votes or to promise to cast any votes for or against the election or nomination of any candidate, or in support of or in opposition to any proposition that is being voted on on the day on which the election affecting such candidates or propositions is being held." Ala. Code, 1940, Tit. 17.

unreasonable limitation upon free speech, which includes free press." 278 Ala. 188, 195, 196, 176 So. 2d 884, 890. The case is here on appeal under 28 U. S. C. § 1257 (1964 ed.).

I.

The State has moved to dismiss this appeal on the ground that the Alabama Supreme Court's judgment is not a "final judgment" and therefore not appealable under § 1257.[3] The State argues that since the Alabama Supreme Court remanded the case to the trial court for further proceedings not inconsistent with its opinion (which would include a trial), the Supreme Court's judgment cannot be considered "final." This argument has a surface plausibility, since it is true the judgment of the State Supreme Court did not literally end the case. It did, however, render a judgment binding upon the trial court that it must convict Mills under this state statute if he wrote and published the editorial. Mills concedes that he did, and he therefore has no defense in the Alabama trial court. Thus if the case goes back to the trial court, the trial, so far as this record shows, would be no more than a few formal gestures leading inexorably towards a conviction, and then another appeal to the Alabama Supreme Court for it formally to repeat its rejection of Mills' constitutional contentions whereupon the case could then once more wind its weary way back to us as a judgment unquestionably final and appealable. Such a roundabout process would not only be an inexcusable delay of the benefits Congress intended to grant by providing for appeal to this Court, but it would also result in a completely unnecessary waste of time and energy in judicial systems already troubled by delays due

[3] Section 1257 provides in part: "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court . . . ."

to congested dockets.[4] The language of § 1257 as we construed it in *Pope* v. *Atlantic Coast Line R. Co.*, 345 U. S. 379, 381–383, does not require a result leading to such consequences. See also *Construction Laborers* v. *Curry*, 371 U. S. 542, 548–551; *Richfield Oil Corp.* v. *State Board*, 329 U. S. 69, 72–74. Following those cases we hold that we have jurisdiction.

II.

We come now to the merits. The First Amendment, which applies to the States through the Fourteenth, prohibits laws "abridging the freedom of speech, or of the press." The question here is whether it abridges freedom of the press for a State to punish a newspaper editor for doing no more than publishing an editorial on election day urging people to vote a particular way in the election. We should point out at once that this question in no way involves the extent of a State's power to regulate conduct in and around the polls in order to maintain peace, order and decorum there. The sole reason for the charge that Mills violated the law is that he wrote and published an editorial on election day which urged Birmingham voters to cast their votes in favor of changing their form of government.

Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs. This of course includes discussions of candidates, structures and forms of government, the manner in which government is operated or should be operated, and all such

[4] This case was instituted more than three and one-half years ago. If jurisdiction is refused, we cannot know that it will not take another three and one-half years to get this constitutional question finally determined.

matters relating to political processes. The Constitution specifically selected the press, which includes not only newspapers, books, and magazines, but also humble leaflets and circulars, see *Lovell* v. *Griffin*, 303 U. S. 444, to play an important role in the discussion of public affairs. Thus the press serves and was designed to serve as a powerful antidote to any abuses of power by governmental officials and as a constitutionally chosen means for keeping officials elected by the people responsible to all the people whom they were selected to serve. Suppression of the right of the press to praise or criticize governmental agents and to clamor and contend for or against change, which is all that this editorial did, muzzles one of the very agencies the Framers of our Constitution thoughtfully and deliberately selected to improve our society and keep it free. The Alabama Corrupt Practices Act by providing criminal penalties for publishing editorials such as the one here silences the press at a time when it can be most effective. It is difficult to conceive of a more obvious and flagrant abridgment of the constitutionally guaranteed freedom of the press.

Admitting that the state law restricted a newspaper editor's freedom to publish editorials on election day, the Alabama Supreme Court nevertheless sustained the constitutionality of the law on the ground that the restrictions on the press were only "reasonable restrictions" or at least "within the field of reasonableness." The Court reached this conclusion because it thought the law imposed only a minor limitation on the press—restricting it only on election days—and because the Court thought the law served a good purpose. It said:

> "It is a salutary legislative enactment that protects the public from confusive last-minute charges and countercharges and the distribution of propaganda in an effort to influence voters on an election day;